

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Deborah Ann Dilley
Deborah Ann Lalgie
SSN XXX-XX-9820

CASE NO. 04-60781 DDO

Debtor.

NOTICE OF HEARING AND MOTION FOR RELIEF FROM STAY

TO: Debtor and other entities specified in Local Rule 9013-3(a).

1. CitiMortgage, Inc. (hereinafter "Secured Creditor"), by its undersigned attorney moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion on October 26, 2004, at 1:00 p.m., or as soon thereafter as counsel can be heard, before the Honorable Dennis D. O'Brien in Courtroom 2, Second Floor of the above entitled Court located at U.S. P.O. Building, 118 South Mill Street, Fergus Falls, Minnesota.

3. Any response to this motion must be filed and delivered not later than October 21, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or served and filed by mail not later than October 15, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rule of Bankruptcy Procedure 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed on June 30, 2004. The case is now pending in this Court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rule of Bankruptcy Procedure 4001. This motion is filed under Federal Rule of Bankruptcy Procedure 9014 and Local Rules 9013-1 - 9019-1.

Movant requests relief from the automatic stay with respect to property subject to a lien. Movant requests said relief be effective immediately notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3).

6. Debtor is indebted to Secured Creditor in the original principal amount of \$64,000.00, as evidenced by that certain mortgage deed dated January 24, 2001, a copy of which is attached hereto as Exhibit "A", together with interest thereon.

7. Debtor's indebtedness is secured by a mortgage on real estate in which Debtor has an interest as evidenced by that certain mortgage deed dated January 24, 2001, executed by Deborah Ann Dilley, a single person, recorded on February 2, 2001, as Document No. 404710, a copy of which is attached hereto as Exhibit "A". The name and address of the original creditor is contained in the attached Exhibit "A". The property is located in Beltrami County, Minnesota and is legally described as follows to-wit:

South 50 feet of the West 150 feet of Lot 2, the West 1150 feet of Lot 3, and the North 5 feet of the West 150 feet of Lot 4, all in Block 3, Auditor's Plat Number 4.

Secured Creditor is now the holder of said mortgage and is entitled to enforce the terms thereof.

8. At all times material, Debtor was in default of the payments and performance of obligations to Secured Creditor.

9. Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. This secured creditor's interest in the property is not adequately protected where, as of September 17, 2004, Debtor is delinquent in the making of post-petition monthly payments as required for the months of July, 2004 through September, 2004, inclusive, in the amount of \$464.04 each; accruing late charges of \$69.60 and attorneys fees and costs of \$700.00. Debtor has failed to make any offer of adequate protection.

10. Secured Creditor desires to protect its interest in the aforementioned property and requests the Court to vacate the stay of actions and allow foreclosure pursuant to Minnesota law.

11. Secured Creditor has incurred and will incur legal fees and costs to protect and enforce its rights in the subject property.

WHEREFORE, Secured Creditor, by its undersigned attorney, moves the Court for an order for judgment that the automatic stay provided by 11 U.S.C. § 362(a) be modified so to permit the movant to commence mortgage foreclosure proceedings under Minnesota law and for such other relief as may be just and equitable.

Dated this 17th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

THIS COMMUNICATION IS FROM A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

SAI:

404710

1000

BELTRAMI COUNTY RECEIPT, 57504

404710

1-31-2001 AMOUNT \$ 147.20

Kay L. Mack, Auditor-Treasurer

AUDITOR W

TREASURER 22

OFFICE OF COUNTY RECORDER

Beltrami County, Minnesota

I hereby certify that this instrument was
 filed in this office for record on the 2nd
 day of February A.D. 20 01 at 10:00
 o'clock A. M. and was duly recorded by

Microfilm No. 404710

Ann F. Allen

COUNTY RECORDER

DEPUTY

[Space Above This Line For Recording Data]

MORTGAGE

Return To:

AFFINITY PLUS FEDERAL C.U.
 2730 SNELLING AVE NORTH
 ROSEVILLE, MN 55113

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated JANUARY 24, 2001 together with all Riders to this document.

MRS-2110

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

VMP -5(MN) (0005)

Page 1 of 15

Initials: hl

VMP MORTGAGE FORMS - (800)521-7291

1-
LY206

2633

EXHIBIT A

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(B) "Borrower" is
DEBORAH ANN DILLEY A SINGLE PERSON

Borrower is the mortgagor under this Security Instrument.

(C) "Lender" is AFFINITY PLUS FEDERAL C. U.

Lender is a CORPORATION

organized and existing under the laws of the UNITED STATES OF AMERICA

Lender's address is 2730 SNELLING AVE NORTH

ROSEVILLE, MN 55113

Lender is the mortgagee under this Security Instrument.

(D) "Note" means the promissory note signed by Borrower and dated JANUARY 24, 2001

The Note states that Borrower owes Lender

SIXTY FOUR THOUSAND AND 00/100

Dollars

(U.S. \$ 64,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than FEBRUARY 1, 2031

(E) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(F) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(G) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

- | | | |
|------------------------------------------------|---------------------------------------------------------|------------------------------------------------------|
| <input type="checkbox"/> Adjustable Rate Rider | <input type="checkbox"/> Condominium Rider | <input type="checkbox"/> Second Home Rider |
| <input type="checkbox"/> Balloon Rider | <input type="checkbox"/> Planned Unit Development Rider | <input checked="" type="checkbox"/> 1-4 Family Rider |
| <input type="checkbox"/> VA Rider | <input type="checkbox"/> Biweekly Payment Rider | <input type="checkbox"/> Other(s) [specify] |

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(J) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(K) "Escrow Items" means those items that are described in Section 3.

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(L) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(M) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(N) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(O) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. Section 2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(P) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns, with power of sale, the following described property located in the COUNTY [Type of Recording Jurisdiction]

of BELTRAMI

[Name of Recording Jurisdiction]:

SOUTH 50 FEET OF THE WEST 150 FEET OF LOT 2, THE WEST 150 FEET OF LOT 3, AND THE NORTH 5 FEET OF THE WEST 150 FEET OF LOT 4, ALL IN BLOCK 3, AUDITOR'S PLAT NUMBER 4

Parcel ID Number:
2810-2812 BEMIDJI AVENUE
BEMIDJI
("Property Address"):

which currently has the address of
[Street]
[City], Minnesota 55601 [Zip Code]

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BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Witnesses:

DEBORAH ANN DILLEY (Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

(Seal)
-Borrower

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STATE OF MINNESOTA,

County ss:

On this 24 day of JANUARY 2001
DEBORAH ANN DILLEY A SINGLE PERSON

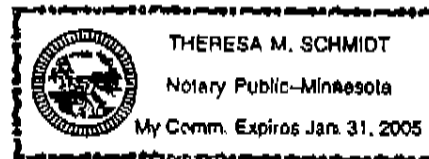
, before me appeared

to me personally known to be the person(s) described in and who executed the foregoing instrument and acknowledged that he/she/they executed the same as his/her/their free act and deed.

Theresa M. Schmidt

Notary Public

My Commission Expires:



This instrument was drafted by:

Affinity Plus Credit Union
2730 Snelling Avenue North
Roseville, MN 55113

Tax statements for the real property described in this instrument should be sent to:
AFFINITY PLUS FEDERAL C.U.
2730 SNELLING AVE NORTH
ROSEVILLE, MN 55113

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

CHAPTER 13 CASE

Deborah Ann Dilley
Deborah Ann Lalgie
SSN XXX-XX-9820

CASE NO. 04-60781 DDO

Debtor.

**MEMORANDUM IN SUPPORT OF
MOTION FOR RELIEF FROM STAY**

ARGUMENT

I. CAUSE EXISTS FOR THE GRANTING OF RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1) WHERE THE INTEREST OF THIS SECURED CREDITOR IS NOT ADEQUATELY PROTECTED.

Pursuant to 11 U.S.C. § 362(g) the burden is on Debtor to prove absence of cause and/or adequate protection. Secured Creditor's interest in the property is not adequately protected where:

1. As of September 17, 2004, Debtor is delinquent for post-petition monthly payments as required for the months of July, 2004 through September, 2004, in the amount of \$464.04 each; accruing late charges of \$69.60 and attorneys fees and costs of \$700.00.

2. Debtor has failed to make any offer of adequate protection.

Furthermore, Debtor has failed to meet its contractual obligations to make payments as they become due after the filing of the bankruptcy petition, which failure constitutes "cause" entitling the Secured Creditor to relief from the automatic stay under 11 U.S.C. § 362(d)(1). A continued failure by Debtor to maintain regular payments to Secured Creditor is sufficient cause to entitle Secured Creditor to relief from the automatic stay. See In re Taylor, 151 B.R. 646 (E.D.N.Y., 1993) and In re Davis, 64 B.R. 358 (Bkrtcy. S.D.N.Y., 1986).

CONCLUSION

Secured Creditor is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause, and where its interest in the secured property is not adequately protected.

Secured Creditor respectfully requests an order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated this 17th day of September, 2004.

WILFORD & GESKE

By /e/ James A. Geske

James A. Geske
Attorneys for Secured Creditor
7650 Currell Blvd., Ste 300
Woodbury, MN 55125
651-209-3300
Attorney Reg. No. 14969X

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

AFFIDAVIT OF PETITIONER

Deborah Ann Dilley

Debtor

Chapter 13, Case No. 04-60781
-----STATE OF Missouri)COUNTY OF St. Charles)

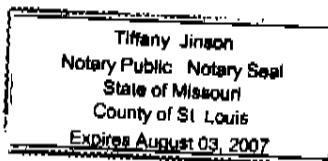
Jim Agee, Jr., being first duly sworn, deposes and states she/he is the authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

Jim Agee Jr.

Subscribed and sworn to before me this
8th day of September, 2004.

Tiffany Jinson
Notary Public

TIFFANY JINSON



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Deborah Ann Dilley
Deborah Ann Lalgie
SSN XXX-XX-9820

CHAPTER 13 CASE

CASE NO. 04-60781 DDO

Debtor.

**UNSWORN DECLARATION
FOR PROOF OF SERVICE**

Joanna Cheyka, employed by Wilford & Geske, attorneys licensed to practice law in this Court, with office address at 7650 Currell Blvd., Ste 300, Woodbury, Minnesota, declares that on September 17, 2004, I served the annexed Notice of Hearing and Motion for Relief from Stay, Memorandum in Support of Motion for Relief, Affidavit of Jim Agee, Jr., and proposed Order to each person referenced below, a copy thereof by enclosing the same in an envelope with first class mail postage prepaid and depositing the same in the post office at Woodbury, Minnesota addressed to each of them as follows:

Deborah A. Dilley
28613 450th Street
LaPorte, MN 56461

Michael J. Farrell
PO Box 519
Barnesville, MN 56514

Michael R. Ruffenach
Ruffenach Law Firm
PO Box 262
Bemidji, MN 56601

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

CitiMortgage, Inc.
c/o McCalla, Raymer et al
Attn: Bankruptcy Department
1544 Old Alabama Road
Roswell, GA 30076

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated this 17th day of September, 2004.

/e/ Joanna Cheyka
Joanna Cheyka

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Deborah Ann Dilley
Deborah Ann Lalgie
SSN XXX-XX-9820

CHAPTER 13 CASE

CASE NO. 04-60781 DDO

Debtor.

ORDER

The above entitled matter came on for hearing upon motion of CitiMortgage, Inc. (hereinafter "Secured Creditor"), pursuant to 11 U.S.C. § 362 on October 26, 2004, at U.S. P.O. Building, 118 South Mill Street, Fergus Falls, Minnesota. Appearances were as noted in the record. The Chapter 13 Trustee filed her Report of Standing Trustee in response to this motion. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED that Secured Creditor, its assignees and/or successors in interest, is granted relief from the stay of actions imposed by 11 U.S.C. § 362 with regard to that certain mortgage deed dated January 24, 2001, executed by Deborah Ann Dilley, a single person, recorded on February 2, 2001, as Document No. 404710 covering real estate located in Beltrami County, Minnesota, legally described as follows, to-wit:

South 50 feet of the West 150 feet of Lot 2, the West 1150 feet of Lot 3, and the North 5 feet of the West 150 feet of Lot 4, all in Block 3, Auditor's Plat Number 4

and may pursue its remedies under state law in connection with the subject note and mortgage deed.

Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____
Judge of Bankruptcy Court